

STATE OF MICHIGAN
COURT OF APPEALS

PEOPLE OF THE STATE OF MICHIGAN,

Plaintiff-Appellee,

v

LARONE J. GARRETT,

Defendant-Appellant.

UNPUBLISHED

April 26, 2002

No. 230154

Wayne Circuit Court

LC No. 98-002778

Before: Gage, P.J., and Griffin and G. S. Buth*, JJ.

MEMORANDUM.

Following a bench trial, defendant was convicted of felonious assault, MCL 750.82, and possession of a firearm during the commission of a felony, MCL 750.227b. The trial court sentenced him to six months' to four years' imprisonment for the assault conviction, to be served consecutively to the mandatory two-year term for the felony-firearm conviction. Defendant appeals as of right. We affirm. This appeal is being decided without oral argument pursuant to MCR 7.214(E).

Although it was undisputed that someone fired shots at the complaining witness, trial testimony conflicted concerning the identity of the shooter. The complainant testified that defendant fired shots from an upstairs window of his parents' house and then ran out of the house and down the street shooting at her and at a car. Two other witnesses also testified that they saw defendant firing a gun. Defendant, on the other hand, testified that the shooter was a visiting friend. The trial court noted the conflicting testimony and after weighing the evidence, concluded that defendant was the assailant.

Defendant's sole claim on appeal is that reversal is required because the trial court's findings were clearly erroneous. Specifically, he contends that the court failed to recognize that the complainant "lied and perjured herself time and again" and that the court should have dismissed all charges based on that perjury. This Court will not disturb a trial court's findings of fact in a criminal bench trial unless they are clearly erroneous. *People v Graham*, 125 Mich App 168, 172; 335 NW2d 658 (1983). A finding is clearly erroneous if it leaves this Court with a definite and firm conviction that a mistake has been made. *People v Kevin Williams*, 244 Mich App 533, 537; 624 NW2d 575 (2001).

* Circuit judge, sitting on the Court of Appeals by assignment.

Defendant's argument amounts to an assertion that the trial court erred in believing the complainant's testimony that defendant was the shooter and disbelieving his testimony that his friend fired the shots. However, as a general rule, the trial judge sitting as trier of fact has the duty to weigh the testimony and assess the credibility of the witnesses. *People v Snell*, 118 Mich App 750, 755; 325 NW2d 563 (1982). Regard shall be given to the special opportunity of the trial court to judge the credibility of the witnesses to appear before it. MCR 2.613(C). Here, the complainant and two other witnesses testified that defendant fired the gun. The trial court was in the better position to determine the witnesses' credibility. We therefore reject defendant's claim that error requiring reversal occurred because the trial court believed the complainant. *Snell*, *supra* at 756.

Affirmed.

/s/ Hilda R. Gage
/s/ Richard Allen Griffin
/s/ George S. Buth